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Dhiana Puspitawati

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Dhiana Puspitawati[1]

A crucial, almost revolutionary, development in the international law of the sea was the recognition of archipelagic state principles within the United Nations Convention on the Law of the Sea 1982 (LOSC). The essential features of archipelagic state principle laid down by Part IV of LOSC include permission to draw straight archipelagic baselines around the outermost points of the outermost islands of archipelagos; and the recognition of the new and distinct legal regime of archipelagic water for the waters thus enclosed of a nature designed to accommodate the interests of maritime user states, that are states which carry out certain activities, including navigation, in the water areas falling under the jurisdiction of archipelagic states. Since this principle has been Indonesian national philosophical outlook even before the adoption of LOSC and provided within Article 25 (a) of the Indonesian Constitutions, it is submitted that all Indonesian national legislations related to ocean affairs should be based on the archipelagic state principles. This study looks at the legal application of archipelagic state principles in Indonesia within the framework of contemporary ocean governance principles. This paper argued that current development on Indonesian law of the sea as well as ocean governance shows less commitment to archipelagic state principles. Thus, it is submitted that archipelagic state principles should be re-stored as the basis of all ocean related legislations and governance.

Keywords: *archipelagic state principles, contemporary ocean governance*

I. Introduction

The development of the customary international law of the sea principles began to evolve from the time of Grotius' "open-sea" principles[2] to

1 SH (Unair), LLM (Monash), PhD (UQ).

2 In the early development of the law of the sea principles, Grotius, the Dutch scholar and lawyer, argued that it is impossible for a state to have sovereignty over any part of the ocean as its right by way of occupation. He also pointed out that countries all over the world have the same rights over the ocean, as, he stated: "the sea is common to all, because it is so limitless that it cannot become a possession of any one, and because it is adapted for the use of all, whether we consider it from the point of view of navigation or of fisheries. In other words, the ocean is 'res gentium' and 'res extra commercium'. See Grotius, H., The Freedom of the Seas or The Right which belongs to The Dutch to take part in The East Indian Trade, (Ralph van Demon Magoffin trans, 1916 ed), 4 [trans of: Hygonis Grotii de Mare Libero].

be the "close-sea" principles[3] upon which it was recognized that coastal states are entitled an extended sovereignty to a certain ocean space along their coast. Accordingly, this gave coastal states a competence to apply policy over the extended ocean space. However, while coastal states' policy would limit access to its ocean territory, others do require access. It is submitted that such condition leads to an endless tension which is hard to balance.

In order to formulate principles which produce an equitable usage of the ocean, the series of conferences on the law of the sea, beginning with the first United Nation Conference on the Law of the Sea (UNCLOS I) followed by UNCLOS II and concluded by UNCLOS III, was held. During UNCLOS III, the Law of the Sea Convention 1982 (LOSC) was adopted. It establishes a holistic and inclusive approach that the problem of ocean spaces is closely interrelated and need to be considered as a whole.[4] One of the crucial and almost revolutionary developments in international law of the sea provided within the LOSC was the recognition of archipelagic state principles laid down by Part IV of LOSC. The essential features of such principles include permission to draw straight archipelagic baselines around the outermost points of the outermost islands of archipelagos; and the recognition of the new and distinct legal regime of archipelagic waters for the waters thus enclosed of a nature designed to accommodate the interests of maritime user states, that are states which carry out certain activities, including navigation, in the water areas falling under the jurisdiction of archipelagic states. This principle stressed heavily on the unity of its islands into single entity.

The archipelagic state principles have been Indonesian national philosophical outlook even before the adoption of LOSC and provided within Article 25 (a) of the Indonesian Constitutions. Thus, it is submitted that all Indonesian national legislations related to ocean affairs should refer to such principles. This study looks at the legal application of archipelagic state principles in Indonesia within the framework of contemporary ocean governance principles. It begins with a very brief historical development of archipelagic state principles, then this study looks at the current legal ap-

3 Contrary to Grotius, Selden argued that a state perpetually exercises exclusive jurisdiction in the surrounding seas as part of its territory. See Selden, John, Mare Clausum,Seu, De Domino Maris : Libri Duo Quorum Argumentum Pagina Versa, Londinense : Will. Stanesbeii pro Richardo Meighen, 1636, cited in Anand, R.P, Origin and Development of the Law of the Sea (1983), 105-6.

4 See de Merffy, Anick, "Ocean governance: A Process in the Right Direction for the Effective Management of the Oceans" (2004) 18 Ocean Yearbook 163, 165.

plication of the principles domestically in Indonesia by analyzing current ocean related legislations and governance.

This paper argued that current development on Indonesian law of the sea as well as ocean governance shows less commitment to archipelagic state principles. While Indonesia, in unity, should consider more outward looking in governing its ocean, especially with regard to ocean resources, it can be noted that such governance is still very inward in nature and representing less reference to archipelagic state principles. Thus, it is submitted that archipelagic state principles should be re-stored as the basis of all ocean related legislations and governance.

II. Historical Development of Archipelagic State Principles

The foundation of this study relies on the acknowledgement of the concept of an archipelagic state as one of international law principle, later known as archipelagic state principles. Geographically, an archipelago is a formation of islands grouping together to form a single unit. Kusumaatmadja argued that from language point of view, an archipelago does not only mean 'a group of islands' but also 'sea interspersed with many islands.'[5] Djalal further believed that if national lakes and rivers are basically parts of land territory of a state, an archipelago is basically the concept of sea territory.[6] Therefore, it is submitted that an archipelagic state is a state whose territory consists mainly of waters interspersed with islands. In any case, archipelagic state principles presuppose the unity between the water and the land; both should be regarded as a single unit.

Under customary international law, each island has its own territorial sea, which is measured from recognized baselines, often the low water mark on shore. This rule would be simple if applied to a state consisting of only one island. However, the suitability of the rule can be questioned if applied to a state consisting of a group of islands (that is, a mid-ocean archipelago) or a state having a fringe of islands along its coast (that is, a coastal archipelago). The application of the above-mentioned customary law to archipelagos was debated extensively. Although the concept of an archipelagic state had not been fully discussed until the commencement of UNCLOS III, in fact, the problem of archipelagos has been around far

5 Kusumaatmadja, Mochtar, Bunga Rampai Hukum Laut (1978), 81.
6 Djalal, Hasjim, Indonesia and the Law of the Sea (1995), 294.

longer than might be surmised. The method of drawing baselines for the purpose of delimiting the territorial sea of archipelagos had been considered in many international meetings and conferences, namely: the Institute de Droit International meeting in 1888,[7] the International Law Association in Stockholm in 1924,[8] the American Institute of International Law in 1925,[9] the Harvard Research Draft on Territorial Waters in 1929[10] as well as in the Hague Codification Conference in 1930.[11] However, none of the meetings came up with a solution for archipelagos.

The next step in the development came after the General Assembly of the United Nations called for a conference on the February 21, 1957.[12] As a result, UNCLOS I was held in Geneva from February 24 to April 29, 1958. However, prior to UNCLOS I both the Philippines and Indonesia declared themselves to be archipelagic state. While the question of mid-oceanic archipelagos remained an issue without gaining any further support until 1955, the Philippines government sent Notes Verbale to the Secretary-General of the United Nations dated 7 March 1955 and 20 January 1956.[13] The Philippines' claim was quickly followed by Indonesia with the 'Djuanda Declaration 1957'.[14] Both the Philippines and Indonesia were on the view that all waters surrounding, between and connecting the islands constituting the state, regardless of their extension and breadth, are integral parts of the territory of the state and therefore parts of the internal or national waters which are under the exclusive sovereignty of the state. In case of Indonesia, eventhough the 'Djuanda Declaration 1957' was only a

7 Read further Natabaya, AS, "The Archipelagic Principles and Indonesia's Interests" (1978) 6 Indonesian Quarterly 65, 66; O' Connel (1971) above n Error! Bookmark not defined., 27; Priestnall, Graham, "The Regime of Archipelagic Sea Lanes Passage and Straits Transit Passage" (1997) 96 Maritime Studies 1, 4.

8 Read further Coquia, Jorge R, "Development of the Archipelagic Doctrine as a Recognized Principle of International Law" (1983) 58 Philippine Law Journal 13 and Defensor, S, at al, "The Concept of Archipelago" (1974) 49 Philippine Law Journal 322. See also Dupuy, R & Vignes, D, A Handbook of the New Law of the Sea (1991), 270.

9 See American Journal of International Law (1926), special supplement, 318-9.

10 See American Journal of International Law (1929), special supplement to V.23, 260, 260-2; Journal of International Law (1929) 23, 275, 275.

11 See League of Nations, Document C.351 (b), M.145 (b) (1930) v. 16, 189; Amarasinghe, CF, "The Problem of Archipelagos in the International Law of the Sea" (1974) 23 International and Comparative Law Quarterly 545.

12 UN General Assembly Resolution 1105 (XI) of 21 February 1957, Official Records of the General Assembly 11th Session, Suppl.No. 17/A/3572 (1957), 54.

13 Kwiatkowska, B & Agoes, Etty R, Archipelagic State Regime in the Light of the 1982 UNCLOS and State Practice (1991), 17. See also Batongbacal, Jay L, "The Philippines' Right to Designate Sea Lanes in its Archipelagic Waters under International Law" (1997) 1 Ocean Law and Policy Series 80, 88-9.

14 The Djuanda Declaration was declared on the 13th of December 1957.

unilateral act by the Indonesian government, it is submitted that the declaration was received as a start of the development of the concept of an archipelagic state in Indonesia. Although UNCLOS I did not specifically take up the matter of archipelago, however, on the few occasions the subject was raised during the Conference.[15] Article 4[16] of the Geneva Convention on the Territorial Sea and Contiguous Zone 1958 (CTSCZ 1958)[17] which was adopted by the Conference recognised the principles enunciated by the ICJ in the 1951 Fisheries Case as being applicable for deciding: in what circumstances straight baselines may be used; and what are the conditions governing the method of drawing particular baselines where the use of straight baselines is permissible.

As UNCLOS I was concluded, two important questions remained unresolved, namely, the breadth of the territorial sea and of fishery limits. Therefore, UNCLOS I, in its Resolution VIII, requested the United Nations General Assembly to examine the advisability of convening a second conference to consider the questions left unsettled. Replying to this request, the United Nations General Assembly by Resolution 1307 (XIII) of 10 December 1958 decided to convene a second conference on the Law of the Sea (UNCLOS II) between 17-26 March 1960 in Geneva.[18]

The main tasks of UNCLOS II were to solve the following questions: "(a) the breadth of territorial sea bordering each coastal state, and (b) the establishment of a fishing zone by coastal states in the high seas contiguous to, but beyond, the outer limit of the territorial seas of the coastal states."[19] It can be seen that no specific point was made on the concept of an archi-

15 As a basis of discussion, UNCLOS I adopted the draft proposals of the International Law Commission (ILC). While ILC failed to solve the problem of what constitute mid-ocean archipelagos, Evensen, in specific supported the conclusion of the ILC in the Special Rapporteur's Third Report, by stating that waters so enclosed and closely linked to the surrounding land of an archipelago would be regarded as 'internal'.

16 According to Article 4 of the 1958 CTSCZ, where the coastline is deeply indented or if there is a fringe of islands along the coast in its immediate vicinity, a method of straight baselines joining appropriate points may be employed. The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast and must not be drawn from low tide elevation unless lighthouses or other similar installation permanently above sea level have been built on them, and the sea areas lying within the lines so drawn must be sufficiently clearly linked to the regime of internal waters. For the determination of particular baselines within the straight baseline system, account may be taken of economic interest peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

17 516 UNTS 205.

18 See the Resolution 1307 (XIII) of the General Assembly of the United Nations convening the conference in United Nations, Official Records of United Nations Conferences on the Law of the Sea, 2nd Conference v1-2 (1960), xi.

19 Dean, Arthur H, "The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Sea" (1960) 54 American Journal of International Law 751, 752.

pelagic state. While the discussion on mid-oceanic archipelagos arose incidentally when discussing historical waters,[20] the concept of archipelagic waters was only indirectly mentioned during the conference and without any further discussion. However, UNCLOS II did agree upon a resolution which emphasized the need for a technical method in fishing that applied a strict interpretation of rules.[21]

The next development was The Third Law of the Sea Conference (UNCLOS III), which lasted between 1974 and 1982 involving a wide range of states and international organizations and involved a complex factor of economics, political and strategic factors. As Third World states become independent and had a voice of their own, they wished to exercise their sovereignty over a certain ocean space. In this regard, coastal states, in particular archipelagic states were keen to establish international control over all of water areas falling within their jurisdiction, especially waters enclosed by archipelagic baselines. On the other hand, user maritime states were desirous of protecting their navigation rights by opposing any weakening of the freedom of passage. It was four leading archipelagic states, Indonesia, the Philippines, Mauritius and Fiji who had proposed a draft proposal on archipelagic principles in order to gain world wide recognition of such principles. On March 14, 1973, the Chairman of the Philippines delegates Arturo Tolentino, on the behalf of archipelagic states (Fiji, Mauritius, Indonesia and the Philippines) submitted to the Sea-Bed Committee four principles relating to archipelagic states,[22] as follows:

a. An archipelagic state, whose component islands and other natural features form an intrinsic geographical, economic and political entity, and historically may have been regarded as such, may draw straight baselines connecting the outermost points of the outermost islands and drying reefs of the archipelago from which the extent of the territorial sea of the archipelagic state is or may be determined.
b. The waters within the baselines, regardless of their depth or distance from the coast, the seabed and subsoil thereof, and the superjacent airspace, as well as all their resources, belong to and subject to the sovereignty of the archipelagic state.

20 A/CONF.19/C.1/L.1, USSR: Proposal, dated 21 March 1960, UN Doc. A/CONF.19/C.1/L.5, Philippines: Amandments to Documents A/CONF.19/C.1/L.1 to L.4, dated 1 April 1960.

21 See United Nations (1960) above n 199.

22 UN Doc. A/AC.138/SC.II/L.15, Archipelagic Principles as proposed by the delegations of Fiji, Indonesia, Mauritius and the Philippines: Explanatory Notes, dated 14 March 1973.

c. The extent of territorial sea, economic and other jurisdictions of the state with regard to the sea around it shall be measured from these baselines; and
d. Innocent passage of foreign vessels through the waters of the archipelagic state shall be allowed in accordance with its national legislation, having regard to the exis ting rules of international law. Such passage shall be through sealanes as may be designated for the purpose by the archipelagic state.

From the above it is submitted that the reasons underpinned these principles were the unity of land, water and people into a single entity. It is argued that these principles marked important progress of the concept of an archipelagic state since the rejection by UNCLOS I in 1958; and covers the whole spectrum of the concept of an archipelagic state departing from the various classical types of proposals made by learned society prior to the UNCLOS I. As these came up, UNCLOS III finally adopted Law of the Sea Convention 1982 (LOSC),[23] within which the concept of an archipelagic state was recognized as international law principles of archipelagic state. There had previously been no established rules under international law for an archipelagic state principle. The essential features of the archipelagic state principle laid down by Part IV of LOSC include permission to draw straight archipelagic baselines around the outermost points of the outermost islands of archipelagos; and the recognition of the new and distinct concept of archipelagic waters for the waters thus enclosed of a nature designed to accommodate the interests of maritime user states, that are states which carry out certain activities, including navigation, in the water areas falling under the jurisdiction of archipelagic states. This principle stressed heavily on the unity of its islands into single entity. This Convention came into force effectively in 1994.

III. Contemporary Ocean Governance Principles: Integrated Approach

Since the adoption of LOSC by international community during UNCLOS III, the awareness in developing the ocean role as human life supported aspect has been increased and resulted to sustainable development

23 UN. Doc.A/CONF.62/ WP. 10/ Rev.3 and Add. 1 and Corr.1-6, Draft Convention, 1980.

of the ocean as was manifested during the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro on 13 – 14 June 1992. This conference resulted in the principles known as the 'Rio Declaration'[24] and also the formulation of 'Agenda 21',[25] which envisaged the need for a new approach to the development and regulation of the marine environment and coastal zones at an international, regional and national level.[26] In this context, the concept of integrated ocean governance has emerged.

Broadly speaking, integrated ocean governance can be understood as a set of rules, practices and institutions which interact at all levels to enable equity and sustainability in the allocation and management of ocean resources and spaces.[27] It is argued that the framework of integrated ocean governance is slowly being formed by emergent and determined elements. Bailet observed these various elements and began to analyse their interactions by classifying them into three categories:[28] (i) legal framework, this

24 The 'Rio Declaration' contains twenty-seven set of principles which define the rights of people to development, and their responsibilities to safeguard the common environment. The Declaration recognises that the only way to have long term social and economic progress is to link it with environmental protection and to establish equitable global partnerships between governments and key actors of civil society and the business sector. It advocates that today's development shall not undermine the resource base of future generations and that developed countries bear a special responsibility due to the pressure their societies place on the global environment and the technologies and financial resources they command. See UN Doc. A/CONF.151/26, Report of the United Nations Conference on Environment and Development: Rio Declaration on Environmental and Development, dated 12 August 1992.

25 The 'Agenda 21' is a blueprint on how to make such development socially, economically and environmentally sustainable.

26 See chapter 17 of Agenda 21 <http:// habitat.igc.org/agenda21/a21-17.htm> at 12 June 2010.

27 Bailet, Francois, "Ocean Governance and its Implementation: Guiding Principles for the Arctic Region" (2005) <http://www.un.org/Depts/los/convention_agreements/convention_20years/presentasion_ocean_governance> at 7 April 2009.

28 Bailet, Francois, "Ocean Governance: Towards an Oceanic Circle" (2005) <http://www/un.org/Depts/los/convention_agreements/convention_20years/presentation_ocean_governance> at 7 April 2007; Bailet, Francois, "Ocean Governance and Human Security: Ocean and Sustainable Development, International Regimes, Current Trends and Available Tools", UNITAR Workshop on Human Security and the Sea, Hiroshima, Japan, (2005) <http://www.unitar.org/hiroshima/shs/Presentations%20SHS/5%20_July/Bailet.pdf> at 7 April 2007. Similarly, on 27 October 2005. the APEC countries have identified four approaches to good ocean governance, which include (i) a legislative based approach, uses statutory framework as starting point for the development of an integrated national ocean governance system. Under this approach, a single agency is usually identified and given responsibility for the eventual development of national policy; (ii) the second approach is integration through the creation of a single ministry or department, with or without legislative and policy support; (iii) the third may be described as a policy-based framework. Herein exsiting sectoral, legislative and administrative arrangements are maintained and attempts are made to link the various sectoral objectives and strategies through a regional marine planning process and (iv) management by sectors

element is composed by international and regional conventions as well as agreements and programmes which establish provisions for the management of affairs. These provisions must be incorporated and implement by states in their national legislation; (ii) institutional framework, this element is composed by the administrative mechanism that are required to establish systems of coordination and cooperation between all the actors that have a role in the management of the oceans; and (iii) mechanism for implementation, which means that in implementing the framework of ocean governance, the mechanism of coordination and cooperation should be made between all level of government in order to avoid the fragmentation of decision-making and exclusion of stakeholders.

Repetto further argued that to establish such ocean governance framework the existence of integrated ocean policy is important.[29] Miles defines policy as "[a] purposive course of action followed by governmental or non-governmental actors in response to some set of perceived problems."[30] Underdal further argued that an integrated policy can be defined as follows:

> *"A policy is integrated to the extend that it recognizes its consequences as decision premises, aggregates them into an overall evaluation, and penetrates all policy levels and all government agencies involved in its execution."*[31]

Having ratified the LOSC,[32] Indonesia is very keen to implement the provisions of LOSC, in particular those relating to the archipelagic state principles. Since the entry into force of the LOSC has been a slow process due to the required number of states' ratifications,[33] Indonesia proceeded with a selective implementation of the LOSC's provisions by enacting new ocean related legislation, as well as revising the existing ocean related leg-

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with interdepartemental coordination. See also APEC Marine Resource Conservation Working Group, *Report of the Workshop on Integrated Ocean Management in the APEC Region*, Vancouver, British Columbia, Canada, 12 – 15 December 2000.

29 Repetto, Miriam Sara, "Toward an Ocean Governance Framework and National Ocean Policy for Peru" The United Nations-Nippon Foundation Fellowship Programmes (2005), 18.

30 Miles, Edward L, "Concepts, Approaches and Applications in Sea Use Planning and Management" (1989) 20 Ocean Development and International Law Journal 213, 214.

31 Underdal, Arild, "Integrated Marine Policy: What, Why and How" (1980) 4 Marine Policy 159, 162.

32 The LOSC is an international convention which only provides general provisions relating to the ocean usage, and to achieve its efficacy it needs further national implementation by the states parties involved

33 According to Article 308 of LOSC, the entry into force of the Convention required 60 number of states ratification.

islation, in particular those related to the archipelagic state principles, with a view to harmonizing its national laws with the provisions of LOSC.

The obligation of ratifying states in implementing LOSC domestically is usually done by enacting new ocean related legislations as well as revising existing National Ocean related legislations. However, Gold stated that in the effort of implementing LOSC, many developing states often faced implementation difficulties.[34] He noticed that while states were well prepared in term of its negotiating positions and strategies put forward during the extensive negotiations in formulating the LOSC, once the Convention had been accepted and tabled for domestic implementation, attitudes seemed to change.[35] He argued that the change in attitude was due to the relinquishment of the Convention's rights and obligations from foreign ministry jurisdiction to various departments which considered competence including the legislative body that had to take over responsibility for the "largest treaty ever produced."[36] This would make the implementation process difficult. Such condition seems to happen in Indonesia in its effort to implement LOSC's provisions, especially those related to archipelagic state. This will be shown later in this paper.

Since to establish integrated ocean governance framework requires an existing national ocean policy and Indonesia's philosophical outlook has been based on the unity of its land and waters as emphasized by archipelagic state principles, it is argued that in implementing LOSC especially those related to archipelagic state principles Indonesia has to have an integrated ocean policy which is committed to archipelagic state principles. It is further argued that archipelagic state principles should serve as the basis to develop Indonesia's entire ocean related legislations.

IV. Indonesia's Archipelagic Sea Lanes Passage and Maritime Boundaries: Remaining Issues

As the leading proponent of archipelagic state principle, Indonesia was very keen to implement archipelagic state provisions provided within LOSC. However, in its effort to implement those provisions, two issues re-

34 Gold, Edgar, "From Process to Reality: Adopting Domestice Legislation for the Implementation of the Law of the Sea Convention" in Vidas, Davor and Ostreng, Willy (eds), Order for the Oceans at the Turn of the Century (1999) 375, 376.

35 Ibid.

36 Ibid, 376-7.

main unsolved were the issue of Indonesia's Archipelagic Sea Lanes Passage (ASLP) application in practice and maritime boundaries issues with neighbouring states.

Concurrent with Article 53 of LOSC, Indonesia has designated its Archipelagic Sea Lanes (ASLs) to accommodate the right of ASLP of foreign state over archipelagic waters, known as the North-South ASLP. While Article 53 (4) and (12) required that the designated ASLs should include all normal passage routes used for international navigation[37] and if archipelagic state fails to do so, the right of ASLP can be exercised in all normal passage routes used for international navigation,[38] Indonesia's North-South ASLs unfortunately did not include all normal passage routes mentioned.[39] This is why Indonesia's ASLs was recognized as 'Partial ASLs'[40] While no where in LOSC mention about 'Partial ASLs', This 'partial ASLs proposal' is defined by the General Provisions for the Adoption, Designation and Substitution of Archipelagic Sea Lanes (GPASL)[41] as "a proposal which does not meet the requirement to include all normal passage routes and navigational channels as required by LOSC."[42] Accordingly, the GPASL further reinforced the obligation upon archipelagic state to complete and include all normal passage routes used for international navigation in its proposal. It is argued that under this concept of 'partial ASLs proposal', approval of the three north/south Indonesian ASLs did not prevent the continued exercise of ASLP in other routes normally used for international navigation located within the archipelagic waters.[43]

37 Article 53 (4) LOSC

38 Article 53 (12) LOSC. In case of Indonesia all normal passage routes are basically routes which run from north to south or vice-versa and from west to east or vice-versa. For detail analysis about the designation of Indonesia's ASLs read further Puspitawati, Dhiana, The Concept of an Archipelagic State and its Implementation in Indonesia, Dissertation, the University of Queensland, 2008.

39 All normal passage routes refered in the case of Indonesia is the routes running from north-south and vse-versa and also rontes running form east-west or vise-versa.

40 Indonesia's north-south ASLs proposal was finally approved during the 69th session in May 1998, of the Maritime Safety Committee (MSC) by the adoption of General Provisions for the Adoption, Designation and Substitution of Archipelagic Sea Lanes (GPASL).

41 IMO Doc. MSC 69/22/Add.1, General Provisions for the Adoption, Designation and Substitution of Archipelagic Sea Lanes (GPASL), dated 19 May 1998.

42 GPASL para. 2.2.2.

43 GPASL para. 6.7. On Indonesia's response to the IMO designation, see Ministry of Foreign affairs of the Republic of Indonesia, "On Indonesia's Archipelagic Sealanes" (Press Release No. 28/PR/VI/98, 15 June 1998) <www.deplu.go.id/english2/pr28-98.htm> at 27 March 2004. For similar point of view see also Djalal, Hasjim, "The 1982 UN Convention on the Law of the Sea and Navigational Regimes" in Johnston, D.M. and Sirivivatnanon, A (eds) Maritime Transit and Port State Control: Trends in System Compliance (2000) 74, 79-80.

Although the term 'Partial ASLs' raised controversy,[44] it was the Indonesian position to recognize the exercise of the right of ASLP through the east/west routes, as stated in the IMO Doc. MSC 67/7/2 relating to the Note by Indonesia:

> *"Pending the designation of other sea lanes through other parts of the archipelagic waters, the right of archipelagic sea lanes passage may be exercised in the relevant archipelagic waters in accordance with the Law of the Sea Convention 1982."*[45]

Similarly, GPASL also provided that:

> *"Where a partial archipelagic sea lanes proposal has come into effect, the right of archipelagic sea lanes passage may continue to be exercised through all normal passage routes used as routes for international navigation or overflight in other parts of archipelagic waters in accordance with UNCLOS."*[46]

However, while Indonesia acknowledges the rights of foreign ships exercising ASLP over the undesignated east/west routes, law enforcement in field shows different attitude. This can be seen in Bawean Incident of 2003. On 3 July, 2003, an aircraft carrier with escorts of the seventh Fleet of the USA, USS Carl Vincent traversed Indonesian archipelagic waters through ASL I with prior notification.[47] The fleet headed south-east along ASL I and was expected to turn to south-west through the Sunda Strait. However, it turned to the east instead of going south through ASL I and proceeded through the undesignated east/west routes used for international navigation. Whilst on the south-east course, one of the USA's F-18 aircraft came into close proximity with an Indonesian commercial aircraft, Bouraq B737-200. Pursuant to this, the Indonesian Air Force sent two Fighting Falcons (F-16s) to the location which was 200 nautical miles west of ASL

44 For the detail of controversy read further Puspitawati, Dhiana (2008) above n. 39.

45 IMO Doc. MSC 67/7/2, para. 11.

46 GPASL para. 6.7.

47 *"Insiden Bawean Tekanan AS menuntut ALKI Timur Barat" Sinar Harapan (Jakarta), 07 Juli 2003; "Laksda (Purn) Joost Mengko: ALKI bukan koridor, tapi akses" Sinar Harapan (Jakarta), 12 Juli 2003. Interview with Prof. Dr. Hasjim Djalal, MA former Indonesian Ambassador to UN, Canada, Germany and Ambassador at large for the Law of the Sea, head of Indonesian representative on the designation of Indonesian ASLs to the IMO (Jakarta, 27 October 2003); interview with* Liutenant Wens L Kappo, Legal Officer of Indonesian Navy, Eastern Fleet (Surabaya, 25 August 2003).

II. Close manoeuvres occurred between the military aircraft of the two nations.[48] This incident fortunately was resolved[49] without loss of life or further incident.

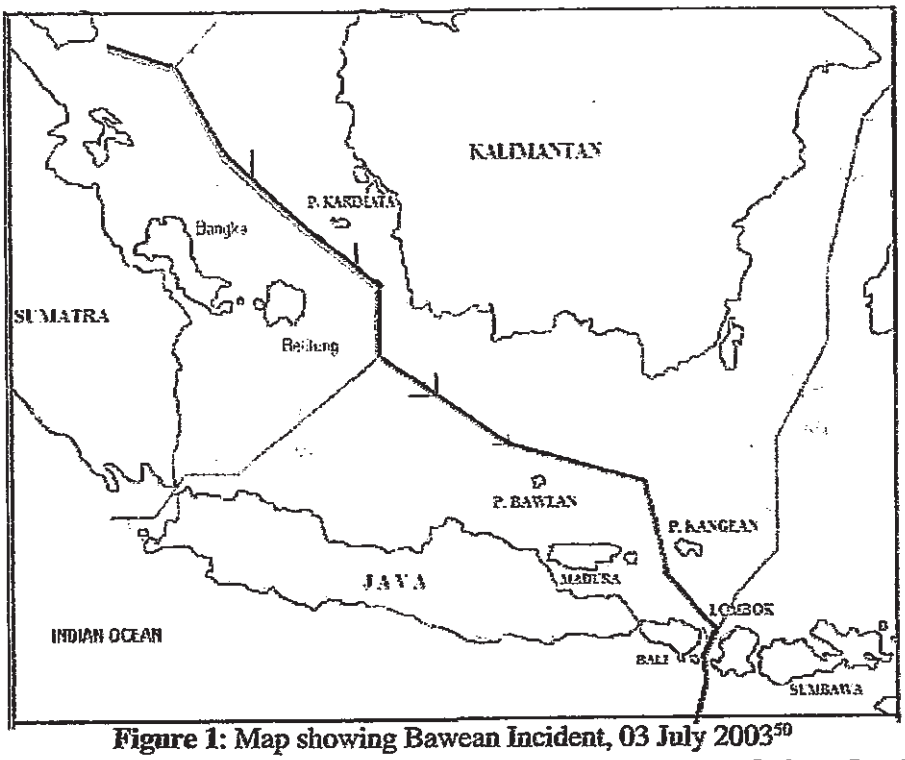

Figure 1: Map showing Bawean Incident, 03 July 2003[50]
The route taken by the *USS Carl Vincent* (Dark Line), and ASL I (from South China to Indian Ocean, Light Blue Line) and ASL II (from Sulawaei to Indian Ocean, Light Green Line)

48 Ibid.

49 The incident was solved by clarification of the Ambassador of the United States of America to the Indonesia Ministry of Politic and Security stating that the United States of America considers Java Sea as the routes normally used for international navigation with the absence of east/west ASLs. See *Sinar Harapan (2003) above n 48.*

50 Author creation based on information from interview with Prof.Dr. Hasjim Djalal, MA, former Indonesian Ambassador to UN, Canada, Germany and Ambassador at large for the Law of the Sea, also head of Indonesian representative on the designation of Indonesian ASLs to the IMO (Jakarta, 27 October 2003) also IMO Doc. SN/Circ.200 (showing ASL I and II), *Adoption, Designation and Substitution of Archipelagic Sea Lanes,* dated 20 May 1998.

From the above, it is worth to discuss whether the passage of USS Carl Vincent over the east/west route was justified under international law of the sea. In analysing this, Articles 53 (4) and (12) of LOSC can be referred. If archipelagic states have chosen to designate those lanes, they should designate them according to the rules set up in Article 53 of LOSC. The important and relevant paragraphs of Article 53 in analysing this matter are paragraph 4 and 12. While Article 53 (4) of LOSC requires that the designation of ASLs by archipelagic state shall include all normal passage routes used for international navigation, Article 53 (12) allows the exercised of the right of ASLP through all normal passage routes used for international navigation, in absence of designated sea lanes. With regard to Indonesia normal passage routes usually used for international navigation includes the north/south as well as the east/west routes. Different to this, Indonesia's ASLs only cover the north/south routes. This way, it can be seen that through the east/west routes there are no designated sea lanes. Accordingly, foreign ships can exercise the right of ASLP through the normal east/west routes usually used for international navigation.

From the above discussion, it can be concluded that the passage of the USS Carl Vincent through the east/west routes (Java Sea) was justified. However, upon such situation, Indonesian officer in field considered that the passage of the fleet through the undesignated east/west ASL(s) should be conducted under the regime of innocent passage based on Article 3 and 15 of Indonesian Government Regulation 37/2002 (hereinafter Regulation 37/2002). While it is acknowledged that innocent passage is applicable in other parts of archipelagic waters other than the designated ASLs,[51] it is unclear whether Article 3 and 15 of the Regulation 37/2002 recognized the exercise of ASLP in all normal passage routes used for international navigation in the absence of the designated sea lanes. The elucidation paragraph of the Regulation 37/2002 emphasized this by recognizing the passage of foreign ships through the undesignated routes would be limited to innocent passage [52] and that the right of ASLP is applicable ***only*** through

51 In the existence of the designated ASLs, the right of ASLP only operates in such designated ASLs. Elsewhere in archipelagic waters (except in internal waters, over which the passage of foreign ships is prohibited), ships, but not aircraft, of all states enjoy the right of innocent passage. Therefore, two regimes of passage opearate in archipelagis waters, namely: innocent passage and ASLP. The rights of ASLP can be exercised in the designated ASLs, and in such case, the innocent passage regimes applicable in other part of archipelagic waters other than the designated ASLs. However, in the absence of the designated ASLs the rights of ASLP can be esxercised through all normal passage routes used for international navigation. See generally Article 53 of LOSC and specifically Article 53 (4) and (12) of LOSC.

52 Paragraph 11 of the Elucidation of Regulation 37/2002, Additional State Gazette (2002) No.

the three north/south ASLs.[53] In contrast, as discussed in the previously that according to Article 53 (4) and (12) as well as paragraph 6.7 of the GPASL and paragraph 11 of the IMO Doc. MSC 67/7/2 relating to the note of Indonesia, in the absence of the designated ASLs, the right of ASLP can be exercise through all normal passage routes used for international navigation, in this regard, the east/west routes. From the above it is argued that there is inconsistency between international rules and domestic legislation in the application of ASLP regimes.

Another remaining issue was problems in maritime boundaries with neighbouring states. As the biggest archipelagic state in the world which is located in a cross road position, that is between two great continents, Asia and Australia, between two great waters, Pacific and Indian Ocean, Indonesia is neighboured with at least 10 countries, over which maritime delimitation agreements are obliged.[54] Up to the present time, Indonesia has made at least 16 maritime delimitations agreements with 7 neighbouring states, which includes: India, Thailand, Malaysia, Singapore, Vietnam, Papua New Guinea and Australia. However, not all agreements have concluded.[55]

The most recent maritime delimitation incident was incident in Tanjung Berakit waters between Indonesia and Malaysia.[56] Indonesia considered that Malaysian fishermen have entered Indonesia's jurisdiction and Malaysia considered that Indonesia has exceeding its authority by capturing Malaysian fishermen in Malaysia's waters. Both Indonesia and Malaysia claim sovereignty upon Tanjung Berakit waters. While Indonesia-Malaysia maritime delimitation agreement has been concluded in 1969, such agreement was only agreed with respect of Malacca Strait.[57] However, many areas remain unresolved, such as the area surrounding Singapore Strait and Tanjung Berakit waters.

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53 Indonesian Navy in field consider that owing to the absence of the east/west ASLs, only the right of innocent passage is allowed over the east/west routes. Interview with CDR Iwan Isnurwanto, Captain of KRI Cakra-401, Indonesian Submarine (Surabaya, 24 August 2006).

54 See Oegroseno, Arief Havas, "Indonesia's Maritime Boundaries" in Cribb, Robert and Ford, Michele, Indonesia beyond the Water;s Edge: Managing an Archipelagic State (2009), 55.

55 Ibid, see also http://www.deplu.go.id/Pages/News.aspx?IDP=387&1=id, access on 01 September 2010.

56 For the detail of the incident visit http://hukum.kompasiana.com/2010/08/16/insiden-tanjung-berakit-"indonesia-vs-malaysia"-_perspektif-hukum-nasional-dan-hukum-internasional/, accessed on 01 September 2010.

57 Oegroseno (2009) above n 56. See also Charney JJ and Alexander L.M (eds) International Maritime Boundaries (1993)

Although Indonesia has determined its archipelagic baselines, in claiming its territorial sea and further maritime zones, Indonesia has to consider its neighbouring states who will also entitled jurisdiction over the same areas of waters, especially when the distance between Indonesia and its neighbouring state, such as Malaysia or Singapore less than 24 nautical miles or less than 200 nautical miles.[58] In case of Tanjung Berakit waters, three states, Indonesia, Malaysia and Singapore are all legally entitled jurisdiction over those areas of waters. While Indonesia and Singapore has agreed on territorial sea delimitation in Tanjung Berakit waters areas, there is no agreed maritime delimitation between Indonesia and Malaysia over those waters. Therefore, how can Indonesia and Malaysia judge each other upon illegal entrance if there hasn't been agreed maritime delimitation over those waters? In addition to this, three islands/rocks located east to Singapore Straits and within the areas of Tanjung Berakit waters, Pedra Branca (Pulau Batu Puteh), Middle Rock and South Ledge are still disputed by Malaysia and Singapore.[59] It seems that this is the reason of why maritime delimitation over Tanjung Berakit between Indonesia and Malaysia was postponed.

Maritime delimitation agreement involves bilateral or even multilateral agreement. Thus, the willingness of each state involved to resolve their maritime boundaries is very important. No single state can resolve its maritime boundaries without the agreement from other states involved. Legally and technically, all method employed in maritime delimitation process have been provided within LOSC,[60] however, political factor often made such process very slow. This is also evident that archipelagic status of Indonesia has resulted in legal consequences both rights and obligations that should be considered more seriously by Indonesia in its commitment to archipelagic state principles.

58 It should be noted that both archipelagic state and coastal states are entitled a certain areas of waters failing under their jurisdiction. That includes: the maximum of 12 nautical mailes of territorial waters, 24 nautical miles of contiguous zone, 200 nautical miles of economic exclusive zone, as well as continental shelf. All of that were measured from designated baselines. If the distance between two or more neighboring state is less than 12 nautical miles, agreed delimitation on territorial sea must be formulated and if the distance is less that 200 nautical miles, agreed delimitation on EEZ must also be formulated.

59 Judgement of ICJ (2008), Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge between Malaysia and Singapore, 23 May 2008.

60 Article 15, 74, 83 of LOSC.

V. Indonesia's Desentralized Coastal Zone Management

Since the contemporary ocean governance emerged, Indonesia has rapidly made significant developments on its ocean affairs including ocean governance. In adopting ocean governance principles, Indonesia adopted Decentralized/Provincial Coastal Zone Management (DCAZM) approach,[61] which gave provincial and local governance greater autonomy including coastal zone management for provincial and local government who has coastal areas in their territory. Such policy, while adds another new dimension of ocean governance in Indonesia, needs a new system and corresponding set of values for policy formulation and implementation.[62]

The concept of Coastal Zone Management (CZM) is classified as the process to control the utilization of coastal zone for various activities and purposes, and has been defined as "[a] production function that combines inputs (labor, natural, resources, capital, time) to produce desired outputs, such as public beaches for recreation, navigation facilities, a specified level of water quality, mean annual fish harvests, the preservation of a marine sanctuary."[63]

For these past five decades, the Indonesian CZM has suffered from a certain level of ambiguity with respect to various laws and jurisdictional issues.[64] There are approximately more than 25 Laws that affected the coastal zone,[65] all of which need to be harmonized so as to prevent ineffective and incompetent management.[66] These are sectoral based, lacking of integration and remain unconcerned with broader sustainability principles. The lack of enforcement results in ineffective management, conflict, redundancy and gaps among the development sectors of the state. These all

61 See also Puspitawati, Dhiana "Indonesia's Provincial Coastal Zone Management within the Framework of Archipelagic State Principles," paper presented at *International Symposium on Small Islands and Coral Reef Management*, Ambon, Indonesia, 4-5 Agustus 2010.

62 For similar view, see generally Djalal, Hasjim, "Hukum Laut Internasional, Wawasan Nusantara dan Otonomi Daerah" (Paper presented at the seminar of Memperkokoh Wawasan Nusantara dalam Era Otonomi Daerah, Bidakara, Jakarta, 8 October 2003).

63 Clark, J.R., Coastal Zone Management Handbook (1996), 694.

64 Satria, A and Matsuda, Y, "Decentralization of Fisheries Management in Indonesia" (2004) 28 Marine Policy 437, 440; Alder, J, Sloan, N.A. and Uktolseya, H., "A Comparasion of Management Planning and Implementation in three Indonesian Marine Protected Areas" (1994) 24 Ocean and Coastal Management 179, 185.

65 Interview with Dr. Lufsiana, SH, MH, Lecturer on Natural Resources of the Ocean and Ocean Management (Surabaya, 3 April 2010).

66 Fox, H.H., Mous, P.J., Pet, J.S., Muljadi, A.H. and Caldwell, R.L., "Experimental Assessment of Coral Reef Rehabilitation following Blast Fishing" (2005) 19 Conservation Biology 98, 104.

lead to increase conflicts of interests among different users, often resulting in increased threats to coastal resources.

In Indonesia, the CZM used to be pursued through a centralistic system, which exerted significant pressure on the democratization process and the establishment of good governance principles. Under this approach, coastal management policies were designed to be applied and implemented in all regional areas of Indonesia regardless of their local problems and the complex social, economic and cultural diversity that existed across the archipelago. It is believed that this system of centralization discouraged the traditional community-based management system and caused endemic conflicts in the fisheries sector.[67]

The Reformation era, which happened in early 1999, has brought a new model for managing the coastal zone in Indonesia.[68] CZM in Indonesia is entering a new phase as a result of two Local Governance Acts (Act 22 and 25/1999, which subsequently revised with Act 32 and 33/2004). These Acts introduce the concept of DCZM which emphasizes the decentralization process and enhances the community's role in managing resources; and readjusted the hierarchical relationship between the provincial and the local governments. The local governments, both kota and kabupaten (cities and districts), have become autonomous and are no longer bound to the hierarchy of the provincial government. However, this arrangement could result in unclear distribution of power between provincial government and local governments. This further could lead to an unlimited autonomy which was not the aim of the enactment of decentralization legislations.

Act 32/2004 devolves the management of coastal zone to provincial administration up to 12 nautical miles from the coastal shoreline,[69] and one-third of the provincial administration is under local government administration.[70] These arrangements apply to both archipelagic waters and territorial sea. If, as stated, the local governments are no longer bound to the hierarchy of provincial government, it is questionable as to whom the local governments will be responsible for its coastal zone management. From this arrangement it seems that local governments have full sovereignty of their coastal waters including claim to its natural resources but

67 Read further Bailey, C, Government Protection of Traditional Resource Use Rights-The Case of Indonesian Fisheries (1986).

68 Siry, H.Y., "Decentralized Coastal Zone Management in Malaysia and Indonesia: A Comparative Perspective" (2006) 34 Coastal Management 267, 273.

69 Article 18 (4) Act 32/2004.

70 Ibid.

in fact they do not. Their rights over the above mentioned coastal zone are only to manage its natural resources.

There are already examples of uncoordinated actions by local governments eager to claim rights on coastal resources. They are already establishing their local acts (Peraturan Daerah/Perda), which are more concerned with revenues than with ecological and sustainable principles. While the Indonesian Act No. 33/2004 on the Distribution of Financial Revenue between Central and Regional Governments is silent on the matter of financial revenue between local and provincial governments, conflicts over management of coastal resources occur. Each development sector has set its own objectives, targets and operational plans. These primarily aim to increase economic benefits. However, objectives and targets of different sectors often overlap and are incompatible. Most of these sectors do not have common goals and objectives to sustain the coastal resources. At the same time, local governments set ambiguous objectives because they did not have any clear authority to manage coastal resources. In most cases, they have extremely limited direct revenue, which leaves them dependent on allocations from central government.[71]

It is provided that according to Article 18 of the Act 32/2004, both provincial and local government administrations have six tasks to undertake in the management of their decentralized zones, namely:

a. exploration, exploitation, conservation and management of coastal resources;
b. administrative affairs;
c. zoning and spatial planning affairs;
d. law enforcement of the regulations issued by the regions or delegated by the central government;
e. participation in the maintenance of security; and
f. participation in the defense of state sovereignty.

The law also establishes the respective authority of and mandates for both provincial and district/cities administrations; these differing only in scale. There are sixteen mandatory tasks[72] under these regulations. Howev-

71 Interview with Dr. Prasetyo Riyadi, SH, MH, Expertise Staff in the Local Government of Surabaya (Surabaya, 10 April 2007).

72 These tasks include: (i) development planning and control; (ii) planning, utilization, and supervision of zoning and spatial planning; (iii) providing public security; (iv) providing public infrastructure and facilities; (v) providing health services; (vi) providing education and resources allocation of potential human resources; (vii) handling of social issues; (viii) administering manpower sector; (ix) facilitating the development of cooperatives, ssmall and medium businesses;

er, the province still holds authority in three primary areas: (i) cross-jurisdictional districts and cities, (ii) authority not yet, or not able to be, handled by the city and district administration; and (iii) administrative authority delegated from the central government.

Furthermore, the central government has the right to enforce laws and regulations as well as the maintenance of security and defense of state sovereignty related to Indonesian waterways. It is then questionable whether the authority of local and provincial governments on the matter stated in paragraph iv-vi of Article 18 of the Act 32/2004 would not lead to the overlaps of authority with the central government? Lufsiana argued that although the Act 32/2004 gives local governments such authority, it should be further regulated by additional supporting legislation since such authorities were feared to have caused the overlaps of authority with the central government.[73] It is submitted that local governments should not be given authorities in security maintenance and defense of state sovereignty or this decentralization could lead to the inconsistency of Indonesia's commitment to archipelagic principles which emphasized the unity of Indonesian.[74]

VI. Indonesian Act No. 27/2007 on the Management of Coastal Areas and Small Islands

Further development on Indonesia's ocean governance was the enactment of Act 27/2007 on the Management of Coastal Areas and Small Islands. This act affirmed DCZM provided within Act 32/2004 and elaborates details arrangement for provincial coastal zone management by formulating zoning plan for its coastal areas. The Act obliged provincial and local government to have coastal areas planning in place consisting of four level planning arrangements, which includes: (i) Strategic Planning for Coastal Areas and Small Islands (Rencana Strategis Wilayah Pesisir dan Pulau-Pulau Kecil, (ii) Zone Planning for Coastal Areas and Small Islands (Rencana Zonasi Wilayah Pesisir dan Pulau-Pulau Kecil), (iii) Governence Planning

(x) environmental management; (xi) agrarian services; (xii) citizenship and civil registration; (xiii) administrative affairs; (xiv) administering capital investment: (xv) providing other basic services; and (xvi) other mandatory affairs as instructed by the laws and regulations.

73 Read further Lufsiana, Wewenang Daerah Mengelola Sumber Daya Perikanan (Dissertation, Program Pasca Sarjana Universitas Airlangga 2006).

74 Similar point of view was also obtained from an interview with Ahmad Dahlan, SH, MAP, Researcher on the Decentralization Concept in Indonesia (Surabaya, 9 April 2007).

on Coastal Areas and Small Islands (Rencana Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil and (iv) Action Plan for the governance of coastal areas and small islands (Rencana Aksi Pengelolaan Wilayah Pesisir dan Pulau-Pulau Kecil). The concept of DCZM is somehow emerged from the concept of marine cadastre applied in coastal states.

It is argued that while such arrangement seems to be easy, the application of such ocean governance planning is difficult since an archipelagic state have a unique method in drawing its baselines which differs from coastal state, from which the concept of marine cadastre emerged. Overlapping territory between two or more provincial territory will happen.[75] Furthermore, existing international obligations and commitment, especially those relating to Indonesia's status of an archipelagic state, such as the rights of archipelagic sea-lanes passage, innocent passage and coral triangle initiative areas, should also be considered. In addition to this, provincial coastal management leads to potential conflict, especially with regard to fishery. There are actually many existing conflict, especially between traditional fishermen across provincial boundary.[76]

VII.Draft on Indonesia's Ocean Act

The newest development on Indonesia's ocean laws and regulation is the draft on Indonesia's Ocean Act. This draft is still in its very early formulation. While an integrated ocean policy should be the basis of all ocean related laws including Ocean Act, the draft is silent on Indonesian national ocean policy. Furthermore, the draft proposes new approach in managing the ocean that is Centralized Planning Decentralized Execution (CPDE). It is argued that CPDE is similar to the centralistic system used in coastal zone management prior to the introduction of DCZM. While centralistic system was considered ignorance the existing traditional community-based coastal management, and thus was replaced by DCZM principles, CPDE seems to re-store the centralistic system. Thus, it is confusing which one is actually adopted by Indonesia in managing its ocean space. At this point, the inconsistency in Indonesia's ocean governance can be noticed.

75 See Warwick, Gullett, "Maritime Law in the Federal Context: Australian and Indonesian Provincial Maritime Zones", paper presented in *International Seminar and Indonesian Forum on Ocean Law and Resources: Building Comprehensive Perspective on National Security and Sustainable Development*, Brawijaya University, 17-19 May 2010.

76 Read further Subianto, Agus, Kebijakan Pengelolaan Konflik Pemanfaatan Sumber Daya Perikanan Laut, Dissertation, Gajah Mada University, 2009.

Furthermore, since the archipelagic state principle emphasized on the unity of land and waters including ocean governance, CPDE, while supported archipelagic state principles, in some extend might challenge the concept of DCZM itself and thus the application of CPDE requires massive change and harmonization on ocean related laws especially those dealing with DCZM. In addition, while ocean governance should have more outward looking in respect to ocean resources, this draft somehow still carry a rather inward perspective of ocean governance.

With regard to institutional framework, it is argued that for integrated ocean governance, institutional framework should consist of at least four elements that is comprehensive, consistent, trans-sectoral and participative. However, institutional arrangement provided within the draft is still lacking comprehensiveness and participative elements. Such institutional framework is also non-solution to the existing overlapping authority between ocean related institutions.

VIII. Conclusion

Having examined problems posed by current development on Indonesian Law of the Sea as well as its ocean governance pattern, two questions can be raised. First, whether Indonesia's commitment on the archipelagic state principle has changed? While Indonesia had very strong commitment to fight for archipelagic state status prior to the adoption of LOSC, recent development shows less commitment on such status. Strong commitment to the archipelagic state concept before the adoption of LOSC can be seen as a strategy designed to gain international recognition of the concept. However, once the LOSC come into force, unfortunately, the priority seemed to change.

Secondly, it is also questionable whether the Indonesian outlook of Wawasan Nusantara which departs from a territorial conception as an archipelagic state and emphasized the realization of the archipelagic state as a single political, socio-cultural, economy, defence and security entity has changed. Since Indonesian National Policy Guidelines (GBHN) 1999 stated a shift of paradigm from terrestrial oriented towards ocean oriented,[77] and Article 25 (a) of the Indonesian Constitutions emphasized the

77 While Wawasan Nusantara outlook has been embodied within the GBHN since the first GBHN in 1969, Indonesia's paradigm has been "terrestrial oriented" instead of "ocean oriented".

characteristic of an archipelagic state,[78] accordingly Indonesian national legislations related to ocean affairs should be based on the concept of an archipelagic state. In addition to this, while Indonesia, in unity, should consider more outward looking in governing its ocean, especially with regard to ocean resources, it can be noted that such governance is still very inward in nature. Thus, it is submitted that archipelagic state principles should be re-stored as the basis of all ocean related legislations and governance.

78 Second Amandment of the Indonesian Constitution 1945, valid as per 18 August 2000.